Robert W. Quinn, Jr.
Federal Government Affairs
Vice President

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3851
FAX 202 457 2545

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Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; In the Matter of SBC Petition fo Expedited Ruling That It Is Non-Dominant In Its Provision of Advanced Services and For Forbearance From Dominant Carrier Regulation for Those Services, WC Docket No. 01-337

In the Matter of Verizon Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202

Dear Ms. Dortch:

On Thursday December 19, I spoke with Christopher Libertelli, Chairman Powell's Legal Advisor. We discussed issues raised in the aforementioned proceedings. Specifically, we stated that SBC has not provided a record sufficient for this Commission to determine that it lacks relevant market power – the fundamental showing required in any reasoned non-dominance determination – with respect to any of the services it seeks to have reclassified. While SBC has conceded that the relevant markets are local (because a residential or business consumer in a particular locality can only turn to the broadband providers that serve that locality) and that competitive activity varies widely from one locality to the next, SBC has not provided competition data for a *single* local market for *any* service. Indeed, in many localities, SBC either faces *no* meaningful competition or controls bottleneck input facilities, *i.e.*, marketplace conditions that the Commission and the courts have consistently held plainly *do* create market power and demand dominant carrier classification.

We also explained that where SBC provides services to small businesses – SBC's DSL services may compete with its own T1, ISDN, and other high margin dedicated business services, but rarely face any competition from cable facilities that do not even *serve* business districts. In many cases, SBC's competition for residential broadband Internet services where cable is active are also limited. As the California PUC has stressed, for example, "forty-five percent of Californians that live in cities with broadband service have DSL service as their *only*

broadband option."[1] I also pointed out that where cable and DSL do compete head-to-head, there usually exists only duopoly conditions that the Commission held in the *DirecTV-Echostar* proceeding cannot be relied upon to constrain market power. Given the record presented, we articulated that Commission cannot make a non-dominace finding and therefore should deny SBC's in its entirety. If the Commission were determined to make some relief available despite the lack of record evidence supporting SBC's request, it should limit that relief to removal of tariff and cost support obligations for retail DSL services sold by a separate affiliate in areas where there is a facilities based cable competitor on the grounds that in those situations, the Commission may assume that the cost of that form of regulation are outweighed by the benefits, although even there, SBC has not made the requisite showing. We also requested that the commission make explicit that special access services are not part of any relief granted as set forth in the NPRM in this proceeding and that all of the tarriffing and cost support obligations currently imposed on the incumbent LEC for services provided to the separate affiliate remain in place.

On the Security Deposit issue, I reiterated AT&T's belief that the Commission should not issue a policy statement that purports to aloow incumbent LECs the ability to bill in advance *all* access customers, regardless of the risks of nonpayment, for any access services, including switched access services – is unlawful, unreasonable, and extremely harmful to the industry and to consumers. Most fundamentally, such an approach is patently overbroad and exceeds what even the ILECs themselves have requested. The advance billing proposal would require even carriers with impeccable payment records to begin paying for access services at least a month earlier. This proposed solution is entirely unresponsive to the alleged problem. According to the ILECs, the problem is *not* that all (or even most) carriers fail to pay for access services in a timely manner. Rather, the ILECs have claimed that they have accumulated growing bad debt expense because a small minority of carriers have been unable to pay for substantial amounts of access services. At most, the appropriate response to such claims is to seek to identify the limited number of carriers that pose the highest risk of non-payment, and to allow the ILECs to obtain reasonable security deposits only from those carriers. The advance billing proposal, however, turns the asserted problem on its head, and demands that *all* carriers suffer the consequences caused by the minority of carriers that are unable to pay for services.

Our comments were consistent with the views expressed in ex partes filed by AT&T as well as the Comments, and Reply Comments previously filed in this proceeding. Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

Robert W. Quinn, Jr.

cc: Christopher Libertelli

[1] *See* Comments of California, CC Docket No. 02-33, at 28 (filed May 3, 2002); *see also Broadband 2001 Report*, Chart 25 (estimating that only 33% of consumers had a choice of DSL and cable modem services and that 38% had DSL as their only option).